

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11-cv-152**

FRANK W. PHILLIPS, JR. and wife, )  
VIVIEN PHILLIPS; MITCHELL LUMBER )  
COMPANY, INC.; MARTHA PHILLIPS, )  
widow; TONI RUTH SMITH; and RUFFIN )  
PHILLIPS AYERS and husband, ROGER )  
ELLIS AYERS, JR., )  
Plaintiffs, )  
vs. )  
TERRI HOPE DUGAS; IRENE W. CAIN; )  
JUDY EDMONDS RIGGINS and husband,) ORDER  
RUSSELL LEWIS RIGGINS; MICHAEL J. )  
BIRCH and wife, FRANCES J. BIRCH; )  
VAN S. BOYD and wife, PATRICIA ANN )  
BOYD; JOSEPH K. HALL and wife, )  
GLORIA B. HALL; ANTHONY M. MILICI )  
and wife, SELENA MILICI; and the U.S. )  
DEPARTMENT OF AGRICULTURE )  
FOREST SERVICE, )  
Defendants. )

Pending before the Court is the “Praecipe” filed by the United States of America on behalf of the U.S. Department of Agriculture Forest Service [# 22]. The United States requests that the Court substitute it as the proper party in place of the U.S. Department of Agriculture Forest Service, as well as other relief. A “Praecipe” is defined in Black’s Law Dictionary as:

1. At common law, a writ ordering a defendant to do some act or to explain why inaction is appropriate.—Also termed *writ of praecipe*. 2. A written motion or request seeking some court action, esp. a trial setting or an entry of judgment.

Black's Law Dictionary 1192 (7th ed. 1999).

Rule 7 of the Federal Rules of Civil Procedure provides that “[a] request for a court order must be made by motion.” Fed. R. Civ. P. 7(b)(1). Pursuant to Local Rule 7.1, a party must file both a motion and a supporting brief. LCvR 7.1(C). If the United States seeks an order from this Court, it should file a motion as set forth in the Federal Rules and the Local Rules. Such motion should “state with particularity the grounds for seeking the order” as well as the “relief sought.” Fed. R. Civ. P. 7(b)(1). Moreover, the motion should set forth the applicable Federal Rule of Civil Procedure, which provide for the substitution of parties. Accordingly, the Court **STRIKES** the Praeclipe filed by the United States [# 22].

Signed: November 9, 2011

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

